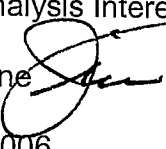




OFFICE OF
INSURANCE COMMISSIONER

MEMORANDUM

TO: Market Analysis Interested Parties

FROM: Jim Odiorne 

DATE: May 17, 2006

RE: Comments on Z Draft

The Office of the Insurance Commissioner (OIC) is a state regulatory agency whose mission is to protect consumers, the public interest, and our state's economy through fair and efficient regulation of the insurance industry.

These are the comments we received on the entirety of our revised Z draft. I expect that we will receive many more oral comments at our next meeting.

I look forward to our face-to-face discussion at 1:30 pm on May 24, 2006. If you plan to participate by conference call, please notify Brenda Davis at BrendaD@oic.wa.gov by noon on Tuesday, May 23.

Jim Odiorne

From: Pelovitz, Betsy [BPelovitz@ahip.org]
Sent: Wednesday, May 17, 2006 6:54 AM
To: Jim Odiorne
Cc: Jones, Christian; Sorensen, Melvin; Beth Berendt; AWHP@comcast.net
Subject: Washington State OIC Market Analysis z-draft - Remaining Issues

Deputy Commissioner Odiorne-

On behalf of America's Health Insurance Plans (AHIP), we appreciate the opportunity that has been provided by the Office of the Insurance Commissioner (OIC) to engage in a dialogue about the legislative proposal for a Market Conduct Surveillance Model Act. AHIP is the national trade association representing nearly 1,300 member companies providing health insurance coverage to more than 200 million Americans.

We appreciate the OIC's efforts to adopt language that incorporates the uniform standards developed by the National Association of Insurance Commissioners (NAIC) and the National Council of Insurance Legislators (NCOIL) with respect to state market analysis and market conduct programs. Please accept this e-mail correspondence in response to your request for comments on "remaining issues" with the 4/26 z-draft. We want to specifically acknowledge our thanks for the revisions that have already been made to the draft by the OIC in response to comments submitted by interested parties.

As noted in our previously submitted written comments, strong confidentiality protections and data verification and complaint reconciliation are important issues to AHIP membership and we believe they are critical components to an effective state and national program for market regulation. The use of inaccurate data leads to the misallocation of limited regulatory resources and can be damaging to an insurer's reputation. Currently, there are no procedures in place in Washington State to confirm the accuracy of this data. Therefore, we strongly recommend the creation of a process to improve data accuracy that incorporates verification of the information by the company or entity under review. In addition, we note that the 4/26 z-draft and current Washington law provide limited protection for an insurer's confidential information that is provided and collected during a market conduct examination and we applaud the draft's recognition that self-evaluative documents must be protected. However, because these documents contain information an insurer gathers to evaluate its compliance with laws and regulations, an activity that should be encouraged, we suggest strengthening the protection of these documents. In addition, with the focus at the NAIC on increased coordination among the states, we strongly recommend strengthening the general confidentiality protections that are currently provided under Washington law. This will ensure that the OIC is able to fully participate in these collaborative efforts by both receiving and sharing confidential information while still maintaining the documents' protection.

We acknowledge that there has been an on-going discussion on these issues throughout the process and understand that the OIC has outstanding concerns that we have yet to address. AHIP would like the opportunity to continue the discussion on these issues with the OIC at the May 24, 2006, to see if we can come to a resolution on these matters that are agreeable to both parties.

Thank you again for your time and commitment throughout this process. We look forward to continuing to work with the OIC on this proposal.

Betsy

Betsy M. Pelovitz
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5/17/2006

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Providing health benefits for over 200 million Americans.

Make plans now to attend Institute 2006 – AHIP's Annual Meeting, June 7-9, 2006, in San Diego.
Visit the conference website, www.ahip.org/conferences/Institute2006, for details.

5/17/2006

Jim Odiorne

From: AWHP [AWHP@comcast.net]
Sent: Wednesday, May 17, 2006 2:13 PM
To: Jim Odiorne
Cc: Beth Berendt
Subject: Comments Re: Remaining Mkt Analysis Z-Draft Issues



Jim

On behalf of AWHP's member plans, I have attached our comments and suggestions re: remaining Market Analysis Z-Draft issues. I am sorry that this is a little late. I have been out of the office this past week due to some recent surgery, and we have fallen bit behind on a few things. Your patience is appreciated.

Thanks again for the opportunity to provide our input & suggestions.

Sydneyh

Association of Washington Healthcare Plans
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5/17/2006



The Association of Washington Healthcare Plans

May 17, 2006

Sent via E-Mail & U.S. Postal Service

Jim Odiorne
Deputy Insurance Commissioner
Washington State Office of Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

Re: Market Analysis Z-Draft
Remaining Issues

Dear Jim,

First of all, on behalf of AWHP's member healthcare plans, I want to again express our appreciation of the opportunity you have provided us these past weeks to provide comments and suggestions regarding the Office of Insurance Commissioner's (OIC's) efforts to develop a legislative proposal for Market Regulation and Surveillance. We also want to convey our appreciation for OIC incorporation of a number of insurer suggestions into the revised Z-Draft revision.

In response to your request, we have identified the following issues as remaining to be resolved. Please refer to our earlier letters for additional details and references to specific subsections of the Z-Draft.

- **Overlapping Statutory Authority.** The overall reservations we have previously expressed regarding the need for and scope of the legislative proposal continue to apply. We continue to be concerned that the proposed draft will not replace existing market conduct examinations but rather will overlay the current structure with yet another process for examining carriers' market practices. Creating a new additional process is not the best way to develop an efficient system for evaluating carrier's performance. We believe that the proposed legislation must include appropriate repealers of existing overlapping statutory authority even if some of the repealers have delayed effective dates to address the Commissioner's concerns about the need for a transition to the new surveillance practices. The cross-walk document provided by AHIP identifies sections where there are overlaps, and could serve as a good starting point for this effort.
- **Complaint Verification.** It is important that a process be incorporated for verification of consumer complaint data accuracy of information by the company or entity under review to, at a minimum; ensure the accuracy of basic facts such as attribution to the correct company or product type. We were pleased to hear from you recently that OIC is considering making changes in the Z-Draft document to address this important issue.
- **Additional Data Requests.** We request removal of language that grants the commissioner authority to request additional data from insurers, since the intention of market analysis is for state regulators to use already available information. We recommend replacing it with language that

would limit an insurer's obligation to report information in a manner inconsistent with the records that are maintained in the ordinary course of business. These changes are in accordance with the goals of increased efficiency and eliminating duplication of efforts.

- **Market Conduct Examination Funding.** As part of our review of the Z-Draft, we note that it contain several references to Market Conduct Examination costs being billed to insurers, however examinations are currently funded through insurer assessments. We respectfully request that you remove the language related to billing insurers, which would impose new and unexpected cost burdens on them.
- **Use of Outside Consultants.** The Z-Draft also contains several references to OIC using outside consultants, as does existing law. Based on OIC statements however, it is our understanding the commissioner will not use outside consultants for Market Conduct Examinations. Accordingly, we suggest removing these references.
- **Transparency.** To enhance transparency and disclosure, we suggest adding language confirming that an insurer will be notified and provided information regarding any market actions that are being pursued against the insurer. We also suggest providing interested parties with notice and opportunity for hearing when NAIC work products are incorporated into Washington state regulations. Clear expectations and guidelines should also be developed for the process that will be followed at the conclusion of an examination. In addition, language should be added to require disclosure of the reasons for any expansion of an on-site examination when an extension of an investigation occurs.
- **Domestic Deference.** We also support AHIP's recommendation that the OIC rely upon actions taken by other states and to accept documentation of modification to processes or procedures when a similar modification is made to the practice or procedure in Washington State. Important efficiencies are gained by eliminating duplicative state examinations of foreign or alien insurers licensed in Washington. We appreciated hearing recently from you that OIC may have additional flexibility in seeking resolution of this matter.
- **Confidentiality.** We strongly suggest clarifying that a preliminary or draft market conduct examination report is confidential and not subject to discovery or admissible in evidence in any private action. RCW 42.56.400 should also be amended to confirm that these particular examination materials are exempt from disclosure under the public disclosure act. In addition, language should also be added to clarify that references to insurer self-evaluations should not be interpreted as requiring disclosure of otherwise confidential or privileged materials.
- **Third-Party Non-Disclosure Agreements.** It is problematic for an insurer using a third-party model or product, or who may be operating under a non-disclosure agreement that precludes disclosure of proprietary details of the model or product. We suggest adding language to clarify parameters and provide specifics.
- **Fines & Penalties.** We recommend development of guidelines that outline the factors and considerations that will be used by OIC when levying penalties as a result of a market conduct action or examination. We also support AHIP's earlier proposal to add a provision to this section that would establish an alternate dispute resolution mechanism for insurers.
- **Effective Date.** It is likely that any Market Analysis legislation would not be passed until April or May of 2007, thus an effective date of July 1st 2007 would not allow sufficient time for any rule-

making --- such as that mentioned in the OIC's April 19th memo. Accordingly, we recommend changing the effective date to no earlier than January 1, 2008.

Taking into consideration the significant impact of the proposed legislation, we encourage your office not to move forward with any legislative changes prior to the resolution of the above issues. In the interim, we appreciate the opportunity to provide our comments and suggestion, and hope they will be of assistance.

Sincerely,

Sydney Smith Zvara
Executive Director